THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 17080 of 2007

Oral order:

The petitioner had taken agricultural loan of Rs. 5,57,085/- from respondent No.4 for establishing poultry farm on 29.03.1997. He repaid an amount of Rs. 4,95885/- till 29.06.2002. He states that he is having shares worth Rs. 55,700/-, and if the amount covering his shares and the interest accrued thereon, is credited to his loan account, he will not be liable to pay any amount to respondent No.4. However, the petitioner states that ignoring the said amounts, respondent No.3 issued notice dated 21.11.2006 showing that he is still due an amount of Rs.1,36,778/-. The petitioner states that he submitted his reply to the said notice. However, respondent No.1 without conducting any inquiry as prescribed under Section 71(1) of the A.P. Co-operative Societies Act, 1964 (hereinafter referred to as 'the Act') issued notice dated 18.06.2007 for sale of the immoveable property mentioned therein and followed by certificate dated 20.06.2007 for recovery of the amount of Rs.2,73,453/-. Assailing the said sale notice and certificate of recovery, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that sale notice dated 18.06.2007 issued by respondent No.1 is illegal and arbitrary, inasmuch as it could not have been issued without issuing sale certificate under Section 71(1) of the Act. He submitted that two days after issuing the sale notice, respondent No.1 issued sale certificate dated 20.06.2007 for recovery of arrears, which is contrary to the provisions of the Act. He further submitted that respondent No.1

issued the sale certificate without conducting any inquiry. He submitted that had respondent No.1 before issuing the sale certificate had conducted the inquiry and given credit to the amounts already paid by him and taken into consideration

clauses (b) and (c) of the Package of Relief Measures for the Debt Stressed Farmers issued by NABARD vide Circular dated 19.10.2006, which provided for waiver of interest and rescheduling of overdue loans, it is not the petitioner but respondent No.4 itself would be liable to return the excess amounts paid by him. He thus submitted that both the sale notice as well as the sale certificate, having been issued in violation of the provisions of the Act, are liable to be set aside, and prayed for appropriate directions.

The learned Government Pleader for Co-operation for respondent Nos. 1 to 3 and the learned Standing Counsel for respondent No.4 fairly admitted that respondent No.1 issued the sale certificate dated 20.06.2007 without taking into consideration the Package of Relief Measures for the Debt Stressed Farmers issued by NABARD vide Circular dated 19.10.2006.

Having heard the learned counsel for the petitioner, the learned Government Pleader for respondent Nos. 1 to 3 and the learned Standing Counsel for respondent No.4, and having regard to the admitted stand taken by the respondents, I deem it appropriate to dispose of the writ petition with the following directions:

The impugned sale notice and the sale certificate, issued by respondent No.1 are set aside. Respondent No.1 shall before issuing the certificate under Section 71(1) of the Act, shall conduct inquiry as provided thereunder. He shall issue fresh notice to the petitioner for recovery of the amounts which according to him are due and payable by the petitioner to respondent No.4. After calling for the objections of

the petitioner, if any, respondent No.1 shall consider the same, with reference to the records also the Package of Relief Measures for the Debt stressed Farmers issued by NABARD vide Circular dated 19.10.2006, which according to the petitioner entitles remission of interest on the loan amount, and pass appropriate orders. If after enquiry, respondent No.1 comes to the conclusion that any amounts are still due and payable by the petitioner, he may issue certificate under Section 71(1) of the Act, followed by sale notice.

Accordingly, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Dated: 19th November, 2007.
KSR